

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

UNITED STATES OF AMERICA

v.

ANDREW CAPOCCIA

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File No. 1:03-CR-35-1

ORDER

The Magistrate Judge's Report and Recommendation was filed June 10, 2009. (Paper 568.) After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Capoccia's motion to vacate under 28 U.S.C. § 2255 (Paper 548) is DENIED without prejudice. The Motion for Order Admitting Petitioner to Bail Pending Petition Under § 2255 (Paper 564) is DENIED as moot.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 15th day of July, 2009.

/s/ J. Garvan Murtha

J. Garvan Murtha

Senior United States District Judge